

REMARKS

Specification

The Examiner objected to the specification because a file name was listed below the contents of the Abstract. Applicant, by amendment, has removed this reference. Accordingly, this objection has been overcome.

In addition, the Examiner objected to the absence of the application number of the pending application. Applicant has amended the specification to include the referenced pending application. Accordingly, this objection has been overcome.

Claim Rejections - 35 U.S.C. §112

The Examiner rejected claims 18-20 pursuant to 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Application has addressed each of the concerns of the Examiner with respect to each of these claims. Accordingly, this rejection has been overcome.

Claims Rejections - 35 U.S.C. §102

The Examiner rejected claims 1-7 and 12-15 pursuant to 35 U.S.C. §102(b) as being anticipated by *Shibata, et al.*, U.S. Patent No. 5,581,619. Applicant has amended its claims to overcome this rejection. Specifically, claim 1 requires, “generating the noise canceling signal,” “sensing a throttle position,” and “ceasing the generation of the noise canceling signal based upon the throttle position.” This feature is not shown by the cited reference. Therefore, claim 1 stands in condition for allowance.

In addition, claim 2 requires, “the step of sensing engine noise and determining whether the engine noise exceeds a predetermined level.” This step is not cited by *Shibata, et al.* Therefore, claim 2 is in condition for allowance.

Claim 3 requires, “the step of sensing background sound and relating the engine noise to the background sound.” This feature is not shown by the cited reference. Specifically, although *Shibata, et al.* may pick up background noise, there is no relating the engine noise to the background sound. For this reason, claim 3 is in condition for allowance.

Claim 4 requires, “wherein the engine noise and the background sound are related by a ratio.” This feature is not disclosed by the cited reference. Therefore, claim 4 is in condition for allowance.

Claim 5 requires, “wherein ceasing occurs when the throttle position is less open than a predetermined position.” This feature is not shown by *Shibata, et al.* Therefore, claim 5 is in condition for allowance.

Claim 6 requires, “the step of sensing for a change in the throttle position.” This feature is not shown by the cited reference. For this reason, claim 6 is in condition for allowance.

Claim 7 requires, “the step of generating the noise canceling signal when the throttle position has reached a predetermined position.” This feature is not shown by the cited reference. Therefore, claim 7 is in condition for allowance.

The Examiner rejected claim 12 pursuant to *Shibata, et al.* Applicant has amended claim 12. Claim 12 requires, “generating a noise cancellation signal,” “sensing engine noise,” and “ceasing the generation of the noise canceling signal in the event the

engine noise does not exceed a predetermined level.” These features are not shown by the cited references. Therefore, claim 12 and its dependents, claims 13-16, stand in condition for allowance.

In addition, claim 13 requires, “the engine noise comprises a ratio of the engine noise to background sound.” This feature is not shown by the cited reference. Therefore, claim 13 is in condition for allowance.

Claim 14 requires, “the step of sensing for a change in the engine noise.” *Shibata, et al.* does not shown this feature. Therefore, claim 14 is in condition for allowance.

Claim 15 requires, “the step of generating the noise canceling signal when the engine noise exceeds the predetermined level.” This feature is not shown by the cited reference, therefore, this claim is in condition for allowance.

Claim 16 requires, “the step of recording the ceasing of the generation of the noise canceling signal based upon the engine noise not exceeding the predetermined level.” This features is not shown by the cited references. Therefore, claim 16 is in condition for allowance.

Claim 17 has been amended to include the limitation, “at least one sensor for sensing a system condition that will result in a generating of an undesirable noise from said speaker,” and “wherein said control unit is configured to disable said noise cancellation feature when said system condition is detected.” These features are not shown by the cited references. Indeed, *Shibata, et al.* does not does not indicate anywhere in its specification that noise attenuation is ceased to avoid the generation of an undesirable sound from the noise canceling speaker. Instead, *Shibata, et al.* ceases the generation of the noise canceling signal in order to update adaptive filter 3. [*Shibata, et*

al., column 8, ll 23-31]. Therefore, claim 17 and its dependents, claims 18-20, stand in condition for allowance.

Allowable Matter

The Examiner objected to claims 9-11 as dependent upon a rejected base claim but indicated these claims to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has rewritten claim 9 upon which claims 10 and 11 depend to remove its dependence upon a rejected base claim and to include the limitations of intervening claim 8, which has been cancelled. Therefore, claims 9-11 are in condition for allowance.

For the foregoing reasons, Applicant believes claims 1-7 and 9-20 stand in condition for allowance.

Applicant respectfully submits that this case is in condition for allowance. If a telephone conference will facilitate moving this case forward to being issued, Applicant's representative is happy to discuss any issues regarding this application with the Examiner and can be contacted at the telephone number indicated below.

Applicant believes that additional fees in the amount of \$86.00 are necessary for one independent claim. A check in the amount of \$86.00 is enclosed. The Commissioner is

authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds
for any additional fees or credit the account for any overpayment.

Respectfully submitted,

CARLSON, GASKEY & OLDS

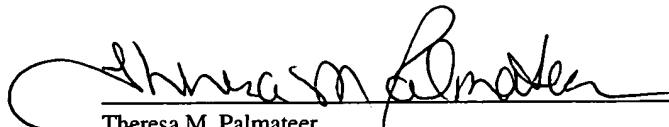
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Dated: August 12, 2004

CERTIFICATE OF MAILING

I hereby certify that the enclosed Response is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on August 12, 2004.


Theresa M. Palmateer

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